

SUMMARY
WORKSHOP OF THE JUDICIAL OFFICERS AT GONDIA
2014-2015

Topic of Paper :- Law relating to adverse possession

ADVERSE POSSESSION

1] The claim to rights and interests in relation to property on the basis of possession has been recognized in all legal systems. Uninterrupted and uncontested possession for a specified period, hostile to the rights and interests of true owner, is considered to be one of the legally recognized modes of acquisition of ownership. The prescription of periods of limitations for recovering possession or for negation of the rights and interests of true owner is the core and essence of the law of adverse possession. Right to access to Courts is barred by law on effluxion of prescribed time.

2] Both Section 64 & 65 are rules of limitations, the only difference being that in the former the onus lies on the plaintiff to prove his possession within 12 years. While in the

latter it is for the defendant to prove when his possession became adverse.

Concept of 'Adverse Possession':-

3] The concept of 'adverse possession' contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of true owner. Possession to be adverse must be possession by a person who does not acknowledge the others' rights, but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show, by clear and unequivocal evidence, that his possession was hostile to the real owner and amounted to a denial of title to the property claimed.

'Adverse possession' is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person, in denial of the owner's right excluded him from the enjoyment of his property. Therefore, the party claiming to hold the immovable property adversely must at least go on to prove that it was in denial of the owners title and that he excluded him from the enjoyment of his property.

4] The maxim that "law and equity does not help those who sleep over their rights" is invoked in support of prescription of title by adverse possession. In other words, the original title

holder who neglected to enforce his rights over the land cannot be permitted to re-enter the land after a long passage of time. The justification for the law of adverse possession is quoted as that possession is “nine points of the law”.

QUALITIES FOR ADVERSE POSSESSION-

- ⇒ The person claiming adverse possession must hold possession by denying the title of the true owner or by showing hostility by act or words or in cases of trespasser as the case may be as against the owner of the property.
- ⇒ The person claiming adversely must have requisite animus. Unless it, mere longstanding possession cannot be termed as adverse possession.
- ⇒ Adverse possession must be a unilateral act and there is no question of any contract or agreement-giving rise of adverse possession.
- ⇒ Physical possession and excluding adversary from possession must exist.

5] The concept of adverse possession contemplates a hostile possession i.e. the possession which is expressly or impliedly in denial of the title of the true owner to the knowledge of the true owner and claiming the title as an owner in himself by the person claiming to be in adverse possession. In other words such hostile possession shall not be secret and

person in adverse possession must not acknowledge the title of the true owner but has to deny the title of the true owner. The adverse possession must be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action. This shows that the possession must be *nec vi nec clam nec precario* i.e. in continuity, in publicity and in extent. This shows that permissive possession is not hostile possession. So also mere long possession even for 100 years is not adverse possession.

6] The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. It is important to note that the starting point of limitation of 12 years is counted from the point of time "when the possession of the defendants becomes adverse to the plaintiff". Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading –"Extinguishment of right to property".

It lays down:

“At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.”

7] Article 65 as well as Article 64 should be read with Section 27 which bears the heading—“Extinguishment of right to property”. It says “At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.” That means, where a cause of action exists to file a suit for possession and if the suit is not filed within the period of limitation prescribed, then, not only the period of limitation comes to an end, but the right based on title or possession, as the case may be, will be extinguished. The section assists the person in possession to acquire prescriptive title by adverse possession

8] In cases under Article 64 the period of twelve years runs from the date of dispossession or discontinuous of possession and if the original owner does not come forward and asserts his title by process of law within the period of limitation his right extinguishes and the person in possession acquires absolute title. In Article 65, the starting point of limitation of 12 years is counted from the point of time “when the possession of

defendants becomes adverse to plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on proprietary title as distinct from possessory title.

SOURCES OF ADVERSE POSSESSION IN INDIAN LEGAL SYSTEM

9] The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. The starting point of limitation of 12 years is counted from the point of time when the possession of the defendants becomes adverse to the plaintiff. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title.

10] Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which lays down as follows ;

“At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.”

11] Section 27 of the Law Of Limitation is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.

PLEADING:-

12] The important question is as to which is the date or approximate time when date can't be ascertained when adverse possession commences to run. The date is not only required to be leaded, but is also required to be proved. *(Krishnamurthy S. Sethur V.O.V. Narasimha Setty and others (AIR 2007 SC 1788).*

13] Important judgments in respect of the date when adverse possession commences to run, *Yesu Sadhu Nimagre and others v/s. Kundalik Babaji Nimagre and another, (1977 Mh.L.J.130)*, the suit was for possession of an encroached land wherein, the defendant denied the title of the plaintiff to the

disputed strip i.e. alleged encroached land and claimed his own title it being, according to him, from his land. On measurement, the disputed strip was found from the land of the plaintiff. Till the date of measurement, none of the plaintiff and the defendant was aware whether the disputed strip of the land was from the plaintiff's land or defendant's land and as such both the parties were uncertain till the date of measurement as to the boundary between their lands. Hence, it was held that no question claiming hostile title by the defendant to the disputed strip could arise prior to the measurement. Hence at the most the date of commencement of adverse possession by the defendant was the date of measurement. Our High Court has, therefore, held that plea of adverse possession is not always a legal plea. It is based on facts which must be specifically raised to that effect in the pleading and then it is to be proved.

14] The Supreme Court has held in case of *S. M. Karim V/S. Mst. Bibi Sakina (AIR 1964 SUPREME COURT 1254)*

Para 5 as under:

5. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an

uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in *Bishun Dayal v/s. Kesho Prasad*, AIR 1940 PC 202 the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

MERE POSSESSION AND LONG POSSESSION – NO ADVERSE POSSESSION.

15] The Apex Court has held in para 22 in *Annakili V/S. A. Vedanayagam & others (AIR 2008 SUPREME COURT 346)* as under:

Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the said purpose,

not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

PRINCIPLE OF TACKING.

16] To tack means “to fasten”, “to stitch together”, “to annex” or “to append”. In view of the principle of tacking if someone derives a title from a person in adverse possession he can tack the period of adverse possession enjoyed by earlier person so as to complete his title as an owner by adverse possession for a total period of 12 years. Thus, a person can usefully claim for the purpose of his adverse possession even the adverse possession of his predecessor from whom he derives right. However, a trespasser cannot tack adverse possession of earlier trespasser, since second trespasser does not derive possession from earlier trespasser. (*Gurbinder Singh & another Vs. Lal Singh & another, AIR 1965 SC 1553*)

Declaration of title can't be sought on the basis of adverse possession.

17] No declaration of title can be sought on the basis of adverse possession. Even if the plaintiff is found to be in adverse

possession he cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if the proceedings are filed against person found in adverse possession he can use it as a shield/defence. (*Gurudwara Sahib Versus Grampanchayat Village Sirthala & another 2014(4)Mh.L.J. 74*)

Incidents in respect of adverse possession/no adverse possession

18] Permissive possession is not adverse till the defendant asserts an adverse possession (*AIR 1954 SC 758, Sheodhari Rai & Others Versus Suraj Prasad Singh & Others*).

19] Symbolical delivery of possession whether legal or otherwise would interrupt the adverse possession where the person is setting up adverse possession in a party to the execution proceedings and time under Article 65 commences from that interruption. (*AIR 1966 SC 470, M.V.S. Manikayala Rao Versus M. Narasimhaswami & Others*)

20] Mere possession even of a trespasser will not constitute adverse possession unless accompanied by open assertion of hostile title. Where a suit is filed within the period of 12 years from the point of time since the defendant claimed

adverse possession, the claim of adverse possession cannot be supported (*AIR 1976 Calcutta 55, Premendu Bhushan Mondal Versus Sripati Ranjan Chakravarty*)

21] An entry in the revenue record does not per se indicate that the person in whose favour the entry has been made is in adverse possession nor is the entry any proof of adverse possession. (AIR 1973J. & K. 53 FB.)

NO ADVERSE POSSESSION AFTER INSTITUTION OF SUIT-

22] For constituting the adverse possession, the defendant must be in possession of the property adversely. Once the suit for possession is institute against the defendant in possession, his adverse possession is not continued thereafter.

POSSESSION IN LIEU OF MAINTENANCE –

23] Where the person is in possession in lieu of maintenance for his life, his possession is not adverse to the person entitle after his death. The basis of this rule is that a person who has a lawful title to the possession, cannot disclaim that title and claim to be in wrongful possession.

for example- where a land was given to a Hindu female in lieu of maintenance, she had an interest of life time only and on

alienation of the land by her, the possession of the alinee becomes adverse to the reversioner only on the death of widow, the limitation against reversioner starts from the date of possession become adverse. i.e. from the death of limited owner.

**POSSESSION OF PROPERTY WHICH BELONGS TO PERSON
UNDER DISABILITY**

24] Where a de-facto guardian enters in the property of the person under disability, the possession of such person would be presumed to be that of a bailiff or agent of the person under disability and not adverse to him. For claiming adversely, the guardian ought to show that he enters in to the possession on his own behalf adversely to the person under disability. However, it is shown that he enters as a guardian, his possession will be so continued as a guardian even after the ward attain majority or remove from disability.

In *Padma Vuthoba Chakkayya -v- Mohd. Multani* MANU/SC/0396/1962; AIR 1963 SC 70 The Hon'ble Supreme Court held that,

“where the owner of the mortgaged property who is a minor sells the property to the mortgagee in possession but the sale is invalid, the possession of the mortgagee which is lawful at its inception cannot become adverse to the minor as the minor is incapable of giving consent to the agreement entered in to with the mortgagee”.

POSSESSION OF THE CO-OWNERS

25] The possession of the co-owner who is entitled as such co-owner to be in possession of the property must be referred to that title only and cannot be considered adverse to the other co-owners. If there is ouster or something equivalent to it, then the possession of the co-owner will be adverse to others. If there is no ouster or exclusion, the possession of one co-owner is not adverse to the others. The possession of the co-owner will be deemed to be the possession of all even if some co-owner are not in actual possession.

26] In Hindu Joint Family, there is a community of interest and unity of possession among all members of joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenary property. The mere fact that any of the coparcener is not joint in possession does not mean that he is ousted from property unless convincing evidence.

ADVERSE POSSESSION OF TRUST PROPERTY

27] Any person who has accepted as a position of trustee and acquired property in that capacity cannot be permitted to assert an adverse title on his own behalf until he obtains a valid discharge from the trust with which he has clothed himself.

ADVERSE POSSESSION- VENDOR AND VENDEE

28] Where a person sells immovable property to another but continues in possession of the property, the vendor's possession is adverse against the vendee from the date of the sale. In such a situation the remedy of the vendee is by a suit for possession to which Art.144 of law of limitation applies and not by suit for specific performance of a contract to which Art.113 will apply. It is not enough that vendor is in possession even after sale, the possession must be adverse to the real owner. if there had been an agreement, the possession of the vendor would not be adverse.

29] **[1] Title by adverse possession cannot be obtained in case of Inam Lands, watan Land and debutter:**

In Madhavrao Waman Saundalgekar & Ors. Vs. Raghunath Venkatesh Deshpande & Ors., A.I.R. 1923 Privy Council 205, their Lordships of the Privy Council dealt with a case of Watan lands and observed that it is somewhat difficult to see how a stranger to a Watan can acquire a title by adverse possession for 12 years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council's decision was noticed in **Karimullakhan s/o Mohd.**

Ishaqkhan & Anr. Vs. Bhanupratapsingh, A.I.R.

(36)1949 Nagpur 265 , and the Hon'ble High Court noted non-availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on Inam lands, Watan lands and Debutter, was incapable of acquisition.

[2] Defence of adverse possession is not available to others in the cases of land belonging to tribal:-

Acquisition of title in favour of a non-tribal by invoking the Doctrine of Adverse Possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogenous reading. **[Amrendra Pratap**

Singh vs Tej Bahadur Prajapati & Ors AIR 2004 SC 3782]

[3] It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner:

It was clarified by a three Judge Bench of the Supreme Court in *Kshitish Chandra Bose v. Commissioner of Ranchi*, AIR 1981 SC 707 “All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded, but that is not the case here.” It thus clear, that if possession is open and exclusive and in assertion of one’s own right, the fact that the possessor did not know who the real owner was, will not make his possession any the less adverse . . . There are certain passing observations in some judgments of the hon'ble Supreme Court [like Appeal (civil) 7062 of 2000, DATE OF JUDGMENT: 24/04/2007 & The State Bank Of Travancore vs Aravindan Kunju Panicker And Ors. on 19 March, 1971, AIR 1971SC 996; (1972) 4 SCC 274] rendered by a bench of Hon'ble two Judges that the plea of adverse possession is not available if the adverse possessor does not know who the true owner is; but, the law declared by the larger Bench.

decisions of the hon'ble Supreme Court obviously prevails.

[4] Adverse possession between co-tenants /co-sharer :

In Jagannath Mevari-Vs-Smt.Chandini Biln, 67 I.C. 31, the question of adverse possession arose as between co-tenants and it was held that in order to establish adverse possession as between the co-sharers there must be evidence of an open assertion of a hostile title by one of them to the knowledge of others. Mere non-participation in the profits by one party & exclusive occupation by other is not conclusive.

[5] Plea of adverse possession of an occupant in continuation of the possession against prior adverse possessor:-

The doctrine of “tracking” permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession of the statutory period. If the adverse possession of an occupant is a continuation of the possession of a prior adverse possessor claiming title, and such occupant claims title from such prior possessor, then the possession of the occupant may be tracked to that of such prior possessor.

[6] A suit for declaration by a person claiming ownership of immovable property by way of adverse possession is not maintainable.*[Bhim Singh & others Vs. Zile Singh & others AIR 2006 P & H 195)*

RELOOK TO THE DOCTRINE OF ADVERSE POSSESSION

30] The Hon'ble Supreme Court of India, has in two recent decisions, namely, **Hemaji Waghaji vs. Bhikhabhai Khengarbhai MANU/SC/4083/2008: AIR 2009 SC 109 and State of Haryana Vs. Mukesh Kumar MANU/SC/1147/2011: AIR 2012 SC 559**, has pointed out the need to have a fresh look at the law of adverse possession.

31] By appropriating the word from the judgment of the High Court (Chancery Division) of England in *J.A. Pye (Oxford) Ltd. vs. Graham*¹⁷, the Hon'ble Supreme Court in the former case, held that:

“the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner “and a windfall for dishonest person who had illegally taken possession of the property”.

32] In Hemaji Waghaji's case, the Hon'ble Supreme Court held on the facts that the appellant had miserably failed to prove adverse possession. However, the Court went further and made the following observations at paragraphs 34 to 36-

“34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts

an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation.

36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

33] In *State of Haryana Vs. Mukesh Kumar*, it is clear that the Hon'ble Supreme Court deprecated the law of Adverse Possession in so far as it benefits a rank trespasser who had wrongfully taken possession of the property belonging to another. The observations in para 35 reinforces this view point quite clearly.

35. A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission. This Court in *Revamma* (supra) observed that to understand the true nature of adverse possession, *Fairweather v. St Marylebone Property Co.* (1962) 2 WLR 1020; (1962) 2 All ER 288 can be considered where House of Lords referring to *Taylor v. Twinberrow* (1930) 2 K.B. 16 termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against the rights of the

paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property.

36. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.

37. The changing attitude of the English Courts is quite visible from the judgment of *Beaulane Properties Ltd. v. Palmer* (2005) 3 WLR 554. The Court here tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimension of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession.

34] In both these decisions there is a hard hitting disapproval to the doctrine of adverse possession and reiterate that the law of adverse possession as archaic and needs a serious re-look in the larger interest of the people.

35] In *Gurudwara Sahib -Vs- Gram Panchayat Village Sirthala and Anr.* MANU/SC/0939/2013 the Hon'ble Supreme Court held that :

"Relief of ownership by adverse possession denied holding that such suit not maintainable when appellant is in possession of suit property since 13.4.1952 and has granted decree of injunction. It obviously means that possession of appellant cannot be disturbed except by due process of law. Even if plaintiff is found to be in adverse possession, it cannot seek declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against appellant and appellant is arrayed as Affirmed defendant then it can use plea of adverse possession as shield/defence."

36] In this decision the Hon'ble Supreme Court stretches that the person in possession of suit property can resist interference from another who has no better title than himself and get injunction as a shield but cannot used it as a sword.

=====